Office-Supreme Court, U.S.
FILED
AUG 15 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2102

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

SHEILA RENDELL-BAKER,
Petitioner,

v.

SANDRA KOHN, ET AL.,
Respondents,

WAYNE KLUG, ET AL.,
Petitioners,

v.

NEW PERSPECTIVES SCHOOL, INC., ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF OF RESPONDENTS BELLOTTI AND HIGHGAS IN OPPOSITION TO THE PETITION FOR THE WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the dismissal of a teacher for open advocacy of student participation in a private school's personnel matters an activity directly related to the school's contracted public function of providing special education?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF CASE 1

Prior Proceedings 1

Statement of Facts 4

SUMMARY OF ARGUMENT 10

ARGUMENT 14

I. RESOLUTION OF THIS CASE DEPENDS UPON AN APPLICATION OF SETTLED LEGAL PRINCIPLES TO A UNIQUE FACTUAL SITUATION. 14

II. DECISIONS OF THE FEDERAL COURTS REFLECT THE SUPREME COURT'S MODE OF ANALYZING STATE ACTION IN THE DELEGATION OF PUBLIC FUNCTIONS. 24

A. The Decision Of The First Circuit Conforms To The Public Function Doctrine. 24

B. Federal Court Decisions Are Generally Consistent With The Public Function Doctrine. 28

CONCLUSION 31

TABLE OF AUTHORITIES

CASES

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 15,15n,16,22n,24,29

Carter v. Atlantic St. Andrews Bay Railway Co., 388 U.S. 430 (1979) 22

Chalfant v. Institute, 574 F.2d 739 (3rd Cir. 1978) 22n

Evans v. Newton, 382 U.S. 296 (1966) 17,18

Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1977) 17,18

Ginn v. Mathews, 533 F.2d 477 (9th Cir. 1976) 33n

Griffith v. Bell-Whitley Community Action Agency, 614 F.2d 1102 (6th Cir. 1980) 29n,30,31,32

Hines v. Cenla Community Action Committee Inc., 474 F.2d 1052 (5th Cir. 1973) 31,32

Hollenbough v. Carnegie Free Library, 545 F.2d 382 (3rd Cir. 1976) 22n

Jackson v. Metropolitan
Edison Co.,
419 U.S. 345 (1974) 15,15n 16

Klug et al v. New Perspectives
School, Inc. et al., No. 80-1451 4n

McQueen v. Druker,
438 F.2d 781 (1st Cir. 1971) 25n,29n

Moose Lodge No. 107 v. Irvis
407 U.S. 163 (1972) 15

National Labor Relations
Board v. Pittsburgh Steamship Co.,
340 U.S. 498 (1951) 22

Norwood v. Harrison,
413 U.S. 455 (1973) 18

Perez v. Sugarman,
499 F.2d 761 (2d Cir.
1974) 33,34,35,36

Rice v. Sioux City Memorial Park
Cemetery,
349 U.S. 70 (1955) 16n,22

Ross v. Allen, No. 80 Civ. 3422
(RWS)(S.D.N.Y., filed May, 6,
1981) 36,37,38, 38n,39

Smith v. Allwright,
321 U.S. 649 (1944) 16,26,27,31,31n,39

Terry v. Adams,
345 U.S. 461 (1953) 17

United States v. Wiseman,
445 F.2d 792 (2d Cir. 1971),
cert. denied, 404 U.S. 967 (1971) 35,36

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution
Amendment I 1

United States Constitution
Amendment V 1

United States Constitution
Amendment XIV 1

42 U.S.C.A. §1983
(West. Supp. 1981) 1

Chapter 766 of the Massachusetts
Acts of 1972 codified as
Mass. Gen. Laws Ann., c. 71B
(West. Supp. 1981) 5

Mass. Gen. Laws Ann., c. 71B,
§§2-5 (West. Supp. 1981) 6

Title II of the Economic Opportunity
Act of 1964, 42 U.S.C.A. §2781 *et seq.*
(West. 1973 & Supp. 1981) 30,32

REGULATIONS AND COURT RULES

603 Code Mass. Regs. §83
et seq. (1979) 5n

Rule 17 of the Rules of the
Supreme Court 28n

STATEMENT OF THE CASE

Prior Proceedings

Plaintiff Sheila Rendell-Baker filed this action for injunctive relief and for damages on July 28, 1977 (Pet. for Cert. 1)[1/] to redress her discharge as a teacher and vocational counselor at the New Perspectives School, Inc. Violations of the First, Fifth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C.A. §1983 (West Supp. 1981) are alleged on the basis that, among other things, plaintiff was terminated for exercising her right to free speech (id.). The original defendants to this suit were the Director and members

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1/ References will be limited to information contained in the Petition For A Writ of Certiorari, designated herein as "Pet. for Cert." and to the Petition's appendix designated herein as "A".

of the Board of Directors of New Perspective School, Inc., sued individually and in their official capacities; Francis X. Bellotti sued in his capacity as Chairman of the Massachusetts Committee on Criminal Justice; Robert J. Kane, sued in his capacity as Executive Director of the Massachusetts Committee on Criminal Justice; and certain federal officials in their capacity as officials of the United States Law Enforcement Assistance Administration (Pet. for Cert. 3-4).

On April 12, 1979, the district court allowed the federal defendants' motion to dismiss (Pet. for Cert. 4; A. 10). William Highgas, Jr., defendant Kane's successor as Executive Director of the Committee on Criminal Justice, was subsequently added as a party defendant in

substitution for defendant Kane (Pet. for Cert. 3; A. 19; Fed R. Civ. P. 25(d)(1)).[2/]

Following extensive discovery the state defendants filed a motion for summary judgment which the plaintiff opposed (A. 10). This motion for summary judgment was allowed on April 16, 1980 (id.). Because the district court (Caffrey, C. J.) granted summary judgment on the basis of a conclusion that there was no state action involved in the firing of plaintiff Rendell-Baker, the case was ordered dismissed not only as to the moving parties but as to all remaining defendants

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2/ Defendants Bellotti and Highgas will be referred to as the "state defendants."

(Pet. for Cert. 4). Plaintiff subsequently filed her notice of appeal (A. 10).[3/]

Statement of Facts

New Perspectives, Inc. is a nonprofit Massachusetts corporation operating as an alternative high school for troubled students (A. 3). The School is located on privately owned property in the Town of Brookline, Massachusetts (id.). It is operated by a Board of Directors,

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3/ The district court (Mazzone, D.J.) denied a motion to dismiss in Klug et al, v. New Perspectives School, Inc. et al., No. 80-1451 a case which also involved the dismissal of teachers from New Perspectives School (Pet. for Cert. 5). The First Circuit Court of Appeals consolidated the Klug appeal with the Rendell-Baker appeal (Pet for Cert. 6). In the same opinion that affirmed the judgment in Rendell-Baker, the court of appeals reversed the order denying defendants' motion to dismiss in Klug (id.). Plaintiffs in the Klug case have joined Ms. Rendell-Baker in filing the instant petition for a writ of certiorari. This brief addresses only Ms. Rendell-Baker's arguments.

no member of which is a government official or was chosen by any government official or governmental body (id.). Approximately fifty students attend the School on a tuition free basis (id.). While students could come to the School through private referral sources or on their own initiative, most are referred by the Drug Rehabilitation Division of the Massachusetts Department of Mental Health or by local school committees under chapter 766 of the Massachusetts Acts of 1972 (id.). Chapter 766 is codified as Mass. Gen. Laws Ann., c. 71B (West Supp. 1981). This law and the regulations promulgated thereunder[4/] establish an entitlement to a publicly-funded education on behalf of children

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4/ 603 Code Mass. Regs. §83 et seq. (1979).

with special education needs. The provisions also set forth a process for evaluating and placing children with such needs in public or private schools. See Mass. Gen. Laws Ann., c. 71B, §§2-5. (West Supp. 1981).

At the time Ms. Rendell-Baker was dismissed, the School received substantial funding from the government (A. 4). In this regard, the vocational education program out of which plaintiff was paid was funded by the federal Law Enforcement Assistance Administration (A. 7) which channeled its funds through the Massachusetts Committee on Criminal Justice (id.). The School was also subject to various governmental requirements (A. 5-6) including approval by the Committee of staff hiring in the School's vocational program (A. 7). This prior

approval was limited to reviewing resumes submitted by New Perspectives in order to ensure that applicants for vocational positions satisfied the qualifications proposed by the School (A. 8). The Committee on Criminal Justice did not interview applicants or exercise any subjective judgment in the hiring process nor did it participate in or impose conditions on the School with respect to termination of New Perspectives' employees (A. 7; 25).

On January 3, 1977 the plaintiff was terminated from her position as vocational counselor at the New Perspectives School, Inc. by Sandra Kohn, Director of the School (Pet. for Cert. 14). Ms. Rendell-Baker had been employed by the School for approximately one year from

January, 1976 to January, 1977 (A. 8). Just prior to her termination, plaintiff had voiced support for reinstitution of a student-staff council through which students could participate in the School's personnel decisions (A. 8). Students had presented a petition seeking reinstitution of the council at a meeting of the School's Board of Directors and had encountered opposition from Director Kohn (id.).[5/]

Plaintiff's protest of her discharge prompted two discreet responses. First, the School appointed a grievance committee to hear the plaintiff's grievances (A. 9). The School did not, however,

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5/ The state defendants have accepted this account of plaintiff's dismissal for purposes of their Motion to Dismiss and/or Summary Judgment.

grant her a formal hearing (id.). Second, a representative of the Committee on Criminal Justice sought, prior to approving a new candidate to fill Ms. Rendell-Baker's position, information concerning the rules and regulations under which the action was taken (id.). While the Committee did not have authority for exercising this oversight (A. 7; 25)[6/] such a response was nevertheless provided and the Committee indicated that it was satisfied.

6/ See p. 7, supra.

SUMMARY OF ARGUMENT

New Perspectives School, Inc. is a private school which contractes with the Commonwealth of Massachusetts to provide statutorily-mandated special education. In providing this education to students placed and funded by the state, the School performes a public function. Under the Supreme Court's public function doctrine, a determination of whether a specific act is subject to constitutional contraints depends upon whether that particular action involves an exercise of a delegated public function.

The specific act which the plaintiff contends is imbued with state action is her dismissal as vocational education teacher at New Perspectives. All parties agree, for the purpose of resolving the

state action issue, that plaintiff was dismissed for advocating student participation in the School's personnel decisions. Thus, the relevant question is whether plaintiff's support of student participation in the hiring and firing of School staff directly relates to the School's public function of providing special education.

This question presents no issue of general importance which would justify the granting of a writ of certiorari. Its resolution would provide little assistance to lower courts confronted with future state action issues involving the delegation of statutorily-mandated special education. A private school delegated a state's special education responsibility might be a state actor with respect to one activity but not another. Each challenged action must be

individually scrutinized in order to determine if the appropriate nexus exists between it and the delegated public function at issue.

The First Circuit's scrutiny of Ms. Rendell-Baker's dismissal resulted in a conclusion that while the School might perform a public function with respect to its student body, it did not perform a public function towards its faculty. This conclusion is supported by the fact that the School's authority over its faculty derives from a contractual relationship of employment, not from state law. Moreover, even if the dismissal of a teacher might, in some instances, involve the exercise of a school's public function, the plaintiff's dismissal did not because it was unrelated to her teaching activities or to the School's

educational responsibilities. Accordingly, the required nexus between the delegated public responsibility for providing special education and termination of the plaintiff was lacking.

The conclusion of the First Circuit is generally supported by decisions of various courts of appeals addressing state and federal action issues in a delegation setting. Where no state action has been found to exist, the challenged activities have tended to involve personnnel matters, like Ms. Rendell-Baker's dismissal, which are collateral to the defendants' performance of public responsibilities. Conversely, where state or federal action has been found to exist, the challenged activities have tended to directly involve the defendants' mode of conducting their

public responsibilities. This latter group of activities is distinguishable from Ms. Rendell-Baker's dismissal which was unrelated to the provision of special education.

ARGUMENT

I. RESOLUTION OF THIS CASE DEPENDS UPON AN APPLICATION OF SETTLED LEGAL PRINCIPLES TO A UNIQUE FACTUAL SITUATION.

Plaintiff petitions for a writ of certiorari to resolve whether and to what extent a private school becomes a state actor when it contracts with the state to provide statutorily-mandated special education. The petition seeks to distinguish this delegation of public responsibility to the private sector from state involvement in private conduct, an issue which has been exhaustively explored in

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) and its progeny. E.g. Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974); Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972).

While a distinction between delegation of public responsibility and state insinuation into private conduct may be valid, the Court has already provided a framework through which to analyze state action issues involving the delegation of governmental obligations. Since the application of that framework to the specific facts of this case presents no issue of general import, a grant of certiorari is both unnecessary and inappropriate.[7/]

7/ The First Circuit also applied a Burton/Jackson insinuation test and

(footnote continued)

The Court's mode of analyzing state action issues involving the delegation of governmental obligations is most explicitly set out in Smith v. Allwright, 321 U.S. 649, 663 (1944) wherein the Court concluded that state action did exist with respect to the delegation to the Democratic party of the state's responsibility to conduct primary elections. Rather than subject the Party to constitutional constraints with respect to all of its activities, however, the Court concluded that state

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(footnote continued)

concluded that there was no state action under it. Given this conclusion, the case fails to raise the potentially significant issue of whether the Burton/Jackson test should be applied in the absence of state action under the public function analysis. See Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955) (court does not sit to satisfy a scholarly or abstract interest in such issues). Plaintiff, moreover, has not requested the Court to review this issue on certiorari.

action existed only "insofar as [the Party] determines participants in a primary election." See also Terry v. Adams, 345 U.S. 461 (1953). By limiting its holding to matters involving the actual electorial process, the Court made clear that the specific action challenged must itself involve the exercise of a delegated govermental responsibility in order for constitutional safeguards to apply. The Court subsequently characterized its analysis as the public function doctrine. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 158 (1977).

In Evans v. Newton, 382 U.S. 296, 299 (1966), the Court also concluded that state action existed in regard to the transfer of a municipal park to private trustees, suggesting that the operation of the park was a function governmental

in nature. Although subsequent decisions of the Court cast doubt on the applicability of the Newton case to the public function doctrine, see e.g., Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 159, n.8, it is significant that the specific action challenged in Newton -- restriction of the park to whites -- related directly to the operation of the park and, hence, to the public function.

Plaintiff suggests that Norwood v. Harrison, 413 U.S. 455 (1973), is also pertinent to state action questions raised by the delegation of public functions to private entities. That case, however, is inapposite to the state action issue before the Court since it involved a direct challenge on equal protection grounds to state support of private schools with racially discrim-

inatory admissions policies. Plaintiffs there did not challenge the private status of the schools on the basis of the state support. Id. at 457-458.

If one applies the public function analysis to the facts of this case, it becomes clear that New Perspectives School would be subject to constitutional provisions only in regard to matters which relate to the School's responsibility to provide special education to students placed and funded by the state. It would not be a state actor in regard to collateral matters which do not bear directly on the School's responsibility to provide publicly-funded and regulated special education. Indeed, plaintiff does not challenge this proposition, arguing instead that her termination relates directly to the School's

performance of its public education responsibilities.[8/] Thus, the dispositive issue before the Court is whether the termination of a teacher for open advocacy of student participation in a private school's general personnel matters is an activity directly related to the school's contracted public function of providing special education.

Given the narrowness of the question presented for review, its resolution would provide little assistance to lower courts confronted with future state action issues involving the delegation of statutorily-mandated special

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8/ Plaintiff acknowledges on p. 20 of her Petition for a Writ of Certiorari that the case "does not raise the question whether a private school becomes a state actor for all purposes when local governments delegate to it their obligation to provide public education."

education, much less other asserted public functions. A private entity delegated the state's special education responsibility might be a state actor with respect to one challenged activity but not another. For instance, review of the present case would be irrelevant to non-teacher termination issues such as school curriculum or library policies arising in the context of a private school setting. Similarly, such review would have minimal relevance to issues involving teacher terminations for reasons other than personnel disputes. Under the public function doctrine previously articulated by the Court, each such action would have to be individually scrutinized to evaluate its relationship to a school's delivery of publicly-mandated and funded education.

This case-by-case application of the previously articulated public function doctrine requires "sifting facts and weighing circumstances,"[9/] an inappropriate task for the Court. See Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955) (problems which are episodic or which benefit particular litigants only do not justify the grant of a writ of certiorari); National Labor Relations Board v. Pittsburgh Steamship Co., 340 U.S. 498 (1951) (certiorari is granted only in cases involving principles of public importance); Carter v. Atlantic and St. Andrews Bay

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9/ Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Chalfant v. Wilmington Institute, 574 F.2d 739, 744 (3rd Cir. 1978) quoting Hollenbaugh v. Carnegie Free Library, 545 F.2d 382, 383 (3rd Cir. 1976) ("within the confines of certain guidelines, the presence or absence of state action must be determined on a case-by-case basis.")

Railway Co., 338 U.S. 430, 438 (1979), Frankfurter, J. dissenting (the grant of a writ of certiorari is inappropriate where the case involves no general principle requiring pronouncement but merely its own unique circumstances). Accordingly, the state defendants respectfully submit that resolution of the case does not present an appropriate issue for the Court to review.

II. DECISIONS OF THE FEDERAL COURTS REFLECT THE SUPREME COURT'S MODE OF ANALYZING STATE ACTION IN THE DELEGATION OF PUBLIC FUNCTIONS.

A. The Decision Of The First Circuit Conforms To The Public Function Doctrine.

In requesting that this Court accept review of the case, plaintiff claims that the First Circuit mistakenly employed a mode of analysis more suited to a Burton-type insinuation case than to the delegation case before it.[10/] While it is true that the First Circuit evaluated the extent of actual state involvement in the School's operation, it is true also that the First Circuit considered whether the School performed a public function in providing statutorily-mandated special education and whether plaintiff's termination sufficiently

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10/ Petition For Writ of Certiorari at 25.

implicated that function to render the School a state actor in effectuating the dismissal.[11/] Its conclusion that the state was not subject to constitutional constraints in terminating plaintiff stemmed from a conviction that while the School might perform a public function with respect to its student body, it did not perform a public function towards

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11/ The fact that the First Circuit employed both modes of analysis and arrived at the same result does not detract from the validity of its holding. To the contrary, it is logical that the state would not be extensively involved in matters unrelated to the School's public function of providing special education. See McQueen v. Druker, 438 F.2d 781, 784 (1st Cir. 1971) ("The stronger posture of government supervision present in this case is not unrelated to the fact that the government has chosen to attract the participation of private persons in carrying out a specific governmental purpose.")

its faculty (A-23).[12/] In other words, the First Circuit refused to conclude that state action existed under the public function doctrine because the required nexus between the delegated public responsibility for providing special education and the termination of the plaintiff was lacking.

This lack of nexus accurately reflects the Smith v. Allwright mode of analysis for two reasons. First, as the First Circuit noted, the School's authority over its faculty derives from a contractual relationship of employment, not from state law (id.). Given this derivation, personnel decisions in

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12/ Since the Court applied the public function doctrine and concluded that state action was lacking, it did not have to resolve conclusively whether the provision of statutory-mandated special education by a private school constituted such a function.

general are distinct from decisions involving the student body which relate to education matters.

Second, the underlying reason for the plaintiff's termination -- advocating student participation in faculty appointments and terminations -- was itself a personnel matter rather than an issue bearing directly on the School's provision of special education. In this regard the termination of the plaintiff must be contrasted to the dismissal of a teacher for classroom incompetence which arguably could be related to a school's special education responsibilities. Thus, the First Circuit's holding lies squarely within the analytical framework established by Smith v. Allwright even though a resolution of state action in other types of personnel actions might not.

B. Federal Court Decisions Are Generally Consistent With The Public Function Doctrine.

Defendants are aware of no other federal court of appeals cases which raise state action issues in regard to teacher terminations by private schools providing special education on contract with the state. Accordingly, the First Circuit decision does not conflict with the decision of any other federal court of appeals on the same matter.[13/]

Insofar as related matters are concerned, the First Circuit decision is generally supported by the decisions of the various courts of appeals addressing

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13/ Rule 17 of the Rules of the Supreme Court sets forth various considerations governing review on certiorari. One such consideration listed in Rule 17.1(a) is whether a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter.

state and federal action[14] issues where other governmental obligations are delegated to private entities.[15]

Several of those decisions involve a conclusion of no federal action in

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14/ The same types of considerations are relevant to a conclusion of federal action as are relevant to a conclusion of state action. See Griffith v. Bell-Whitley Community Action Agency, 614 F.2d 1102, 1108 (6th Cir. 1980) (noting that the Burton rationale has been applied to find both state and federal action in a variety of contexts).

15/ The decision is also consistent with an earlier state action case decided by the First Circuit, McQueen v. Druker, 438 F.2d 781 (1st Cir. 1971). There the court concluded that the provision of housing for urban renewal displacees was a governmental function which was being performed by private landlords receiving governmental subsidies to do so. The First Circuit's holding that the landlord's attempted eviction of his tenants constituted state action can be reconciled with the present case since the attempted eviction was directly related to the public function of providing housing for urban renewal displacees.

regard to nonprofit corporations which receive state and federal funds for the purpose of operating anti-poverty programs under Title II of the Economic Opportunity Act of 1964, 42 U.S.C.A. §2781 et seq. (West 1973 & Supp. 1981). In Griffith v. Bell-Whitely Community Action Agency, 614 F.2d 1102 (6th Cir. 1980), employees of a community action agency funded by the federal government pursuant to the Economic Opportunity Act of 1964, claimed that the agency violated their constitutional rights by discharging them because of their opposition to the election of the agency's executive director. Notwithstanding the agency's extensive federal funding and its subjection to an elaborate and pervasive body of federal regulations, the Sixth Circuit concluded that the dismissals did not constitute state action

because the federal government had no control over, nor involvement in, this matter. Griffith at 1109. Thus, as in Smith v. Allwright and in the First Circuit decision below, the court focused on the particular act that was being challenged in order to conclude that federal action did not exist.[16/] Moreover, like the issue here, the challenged act was a personnel dispute which was unrelated to the agency's public purpose of fighting poverty.

Similarly, the Fifth Circuit in Hines v. Cenla Community Action Committee, Inc., 474 F.2d 1052 (5th Cir.

16/ Although the Sixth Circuit focused on the particular act in terms of its nexus to governmental regulations and funding rather than in terms of its nexus to the agency's public function of fighting poverty, such analysis is not inconsistent with Smith v. Allwright or the First Circuit decision below, see p. 25 n.11, supra.

1973) concluded that a community action agency was not a state actor in dismissing the agency's Executive Director. As in Griffith, the agency was funded and regulated by the Office of Economic Opportunity pursuant to Title II of the Economic Opportunity Act of 1964, 42 U.S.C.A. §2781 et seq. (West 1973 & Supp. 1981). Nevertheless, the court determined that the true beneficiaries of the Act were poverty stricken individuals and, accordingly, that plaintiff's right to employment was not based on the federal statute but rather on private contractual rights. 474 F.2d at 1656. This determination mirrors the analysis of the First Circuit below wherein Ms. Rendell-Baker's employment by New Perspectives was found not to derive from state law but from a contractual relationship. The result in Hines,

moreover, represents yet another example of a personnel dispute failing to generate state action in the context of a governmental obligation delegated to a private entity.[17/]

More explicit support for application of the public function doctrine to resolve state action issues in a delegation setting is found in Perez v. Sugarman, 499 F.2d 761 (2d Cir. 1974). Perez involved the delegation to a private institution of New York's statutory responsibility to care for

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17/ But see Ginn v. Mathews, 533 F.2d 477 (9th Cir. 1976) finding state action in regard to a community action agency operating a Headstart program under the Economic Opportunity Act of 1964. There the challenged activity was an alleged retaliatory dismissal of employees for union involvement.

neglected and abandoned children. The court characterized this responsibility as a public function and noted that the dependence of the state on private parties was "a factor which tends to establish the intimacy requisite to a finding of 'state action.'" Perez at 766.

Significantly, the Court rejected the notion that:

> every action in which such an institution engages is 'state action.' Rather, appellant argues only that the particular custodial power exercised here in detaining appellant's children constitutes 'state action' because there is a nexus between the public function being performed and the specific acts which are alleged to be objectionable. Id.

Applying this rationale to the facts presented in Perez, the Second Circuit concluded that state action did exist.

This conclusion does not undermine the holding below, however, because in Perez the specific act challenged was a programmatic matter: the detention of two children by a private child care institution without court order or parental consent. Since this activity constituted an exercise of the public function, a nexus clearly existed between the challenged act and the public function being performed. Perez therefore represents the converse of the present case.

An earlier Second Circuit case, United States v. Wiseman, 445 F.2d 792 (2d Cir. 1971), cert. denied, 404 U.S. 967 (1971) also concluded that state action did not exist in regard to the delegation of the state's function of process serving upon private parties.

The two essential elements of the court's analysis were the traditionally public nature of process serving and the fact that the challenged act concerned delivery of false affidavits of service. Wiseman at 796. The court described the act as "directly involv[ing] defendants' mode of conducting this public function . . . not . . . a collateral aspect of the process serving business." Id. Thus, the Wiseman analysis conforms to the public function doctrine and its result, like Perez, is visibly distinguishable from the First Circuit's holding below.

Finally, despite a conclusion of state action, Ross v. Allen, No. 80 Civ. 3422 (RWS) (S.D. N.Y., filed May 6, 1981) (A. 62-84), which plaintiffs describe as the case "most nearly on point," also supports the defendants' position in

opposing the grant of certiorari. The private school in Ross, like New Perspectives, provided special education on contract with the government and was subject to extensive public regulation. The plaintiff in Ross, like Ms. Rendell-Baker, was dismissed from the faculty of the private school. Prior to her dismissal the plaintiff had been employed as a psychologist whose duties included the performance of psychological evaluation, psychotherapy and teaching. Her dismissal stemmed from opposition to an official school directive concerning the indefinite suspension of a child for behavioral problems.[18/] The school

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18/ Ms. Ross informed school officials of the illegality of the suspension action, informed the student's mother of her son's procedural rights, and contacted the Child Advocacy Project of the New York City Board of Education (A. 65).

claimed Ms. Ross had improperly contacted the Board of Education, an "outside agency" concerning the school's activities and had assumed an inappropriate role as a child advocate (A. 66).

The critical distinction between Ross and the present case lies in the nature of the challenged activity and its relationship to the public function of providing special education pursuant to a governmental contract.[19/] In Ross the psychologist's actions were directly related to the provision of special education; her involvement

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19/ The court in Ross specifically characterized its analysis of state action as the "state-function" approach and justified taking this approach because under New York law, the state had a duty to provide for the educational needs of handicapped children which could be discharged through contracts with private institutions (A. 69).

stemmed from concern about the interruption in the child's special education. Thus, rather than a dismissal over a matter of general administrative policy as is at issue here, the dispute in Ross directly implicated the school's public function.

This distinction not only reconciles the results of the two cases but underscores the critical nature of the factual context in which the delegation of a public function is asserted. Because of the significance of the factual context, the granting of certiorari here would provide little guidance to resolving future cases involving the delegation of public functions whether or not they involve special education. To the extent that the public function doctrine enunciated in Smith v. Allwright remains viable, the facts of each case would

have to be individually assessed to determine whether the challenged activity relates to a delegated public function. As this Court has previously recognized, it should not involve itself in such a monitoring role.

CONCLUSION

For the reasons stated, the petition for the writ of certiorari should be denied.

Respectfully submitted,

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